

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 || PLAS B. BOOKER,

Petitioner,

3:03-cv-00027-LRH-VPC

10 | VS.

ORDER

11 || MICHAEL BUDGE, *et al.*,

Respondents.

This habeas corpus action was remanded from the Court of Appeals on June 19, 2006 (docket #47, 48). The Court of Appeals agreed with this Court's determination that a particular claim -- Ground 4 -- as it was alleged by petitioner, was unexhausted, but the Court of Appeals directed that on remand this Court should consider the possibility of a stay, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), to allow petitioner an opportunity to exhaust the unexhausted claim. The *Rhines* decision was decided some two years after this Court addressed the issue of petitioner's unexhausted claims.

22 This action was litigated to judgment by petitioner acting *pro se*. Now, on remand, petitioner
23 is represented by the Federal Public Defender (FPD).

Promptly following the remand, on June 22, 2007, petitioner filed a Motion for Leave to File Amended Petition (docket #50). In that motion, petitioner seeks to amend his petition to assert only one claim, which would be a revised version of Ground 4. Petitioner would revise Ground 4 to

1 frame that claim in a manner such that it might be considered to have been exhausted in state court.
2 Petitioner has filed the proposed Amended Petition (docket #51), as well as supporting exhibits
3 (docket #52). Respondents filed an opposition to the Motion for Leave to File Amended Petition
4 (docket #53). Petitioner filed a reply (docket #55).

5 The Court will grant petitioner leave to file the amended petition.

6 The Court finds that granting petitioner's motion, and allowing the amendment, is in the
7 interests of justice. *See Fed. R. Civ. P. 15(a)*. This is so, especially, because petitioner is now
8 represented by counsel. Furthermore, respondents have not described any manner in which they will
9 be unfairly prejudiced by the amendment.

10 Moreover, the Court finds the amendment to be consistent with the instructions of the Court
11 of Appeals on remand. The Court of Appeals remanded for this Court "so that the district court will
12 have an opportunity to consider how Booker's petition should be treated in light of *Rhines*."
13 Memorandum (docket #47), p. 3. Now with the benefit of counsel, and in light of *Rhines* and the
14 Court of Appeals' ruling, petitioner seeks to amend his claim such that it might be considered
15 exhausted and might be considered on its merits, rendering a *Rhines* stay unnecessary.

16 The Court will allow the amendment, and require respondents to answer or otherwise
17 respond to the amended petition.

18 **IT IS THEREFORE ORDERED** that petitioner's Motion for Leave to File Amended
19 Petition (docket #50) is **GRANTED**. The Amended Petition has already been filed (docket #51).
20 No further action by the Clerk is necessary in that regard.

21 **IT IS FURTHER ORDERED** that respondents shall have until and including
22 **March 28, 2008**, to file an answer or other response to the Amended Petition for Writ of Habeas
23 Corpus (docket #51).

24 Dated this 30th day of January, 2008.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE